ATTORNEY FOR APPELLANT:

ROBERT J. BRATCH
Marion, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MATTHEW D. FISHER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

RALPH D. PACE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A04-0605-CR-257
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Natalie Conn, Judge
Cause No. 27D03-0509-FD-740

October 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Ralph Pace appeals his conviction for Class D felony operating a vehicle while intoxicated.[1] We affirm.

Issue

The sole issue on appeal is whether the evidence was sufficient to support Pace's conviction.

Facts

The evidence most favorable to the conviction shows that at approximately 5:00 a.m. on September 13, 2005, Deputy Scott Haley from the Grant County Sheriff's Department approached a vehicle in a ditch along the side of State Road 15 in Grant County. Deputy Haley observed that one of the vehicle's tires was flat. There was only one person in the vicinity of the vehicle; that person subsequently identified himself as Pace. Deputy Haley observed that Pace's speech was slurred and that he had difficulty maintaining his balance. While Deputy Haley and Pace talked about Pace's car, Pace expressed concern that he would be sent to jail that night for drunk driving.

Grant County Sheriff's Deputy Doug Jentes arrived at the scene shortly after Deputy Haley and asked Pace to perform several field sobriety tests. Pace failed the horizontal gaze nystagmus, one-legged stand, and nine-step walk and turn tests. Deputy

[1] After the trial court found Pace guilty of Class A misdemeanor operating while intoxicated, his conviction was elevated to a Class D felony when he admitted to having been previously convicted of operating a vehicle while intoxicated.

Jentes then administered a portable breath test, the results of which indicated that Pace's blood alcohol level was .20. Pace was arrested.

On September 14, 2005, the State charged Pace with Class A misdemeanor operating a vehicle while intoxicated and Class D felony operating a vehicle while intoxicated as a second offense. On March 2, 2006, the trial court held a bench trial. Pace stipulated to the results of the field sobriety and portable breath tests. Following the State's presentation of evidence, Pace moved for a judgment on the evidence arguing that the State had failed to prove he had operated a vehicle while he was intoxicated. The trial court denied that motion on April 25, 2006, and found Pace guilty of the Class A misdemeanor. Pace then stipulated to his prior conviction for operating a vehicle while intoxicated, elevating his conviction to a Class D felony. He now appeals.

Analysis

Pace contends that the State's evidence is not sufficient to support his conviction. It is the fact-finder's job to determine whether the evidence in a particular case sufficiently proves each element of an offense. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). On review, we consider conflicting evidence most favorably to the trial court's judgment and do not reweigh the evidence or judge the credibility of the witnesses. Id. We will affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

Here, the State was required to prove that Pace operated a vehicle while he was intoxicated. See Ind. Code § 9-30-5-2. Pace does not contest the fact that he was

intoxicated during his encounter with Deputies Haley and Jentes, nor does he contest the fact that he had been driving the vehicle found along the side of State Road 15. Instead, Pace argues that the evidence is insufficient to prove that he simultaneously operated his vehicle and was intoxicated because no witness testified to having seen him operate the vehicle and because there was no evidence of when Pace became intoxicated relative to the time when he operated his vehicle.

In support of his position, Pace directs us to several cases in which this court and our supreme court have reviewed appellants' convictions for operating a vehicle while intoxicated. Pace posits that the facts in this case are substantially similar to those this court reviewed in Flanagan v. State, 832 N.E.2d 1139 (Ind. Ct. App. 2005), and Robinson v. State, 835 N.E.2d 518 (Ind. Ct. App. 2005), and that his conviction should be reversed.

In Flanagan, a passing police officer noticed two men standing along the side of a road next to a disabled vehicle. Flanagan, 832 N.E.2d at 1140. Some time later, the officer returned to the vehicle and found that the men had begun walking to a convenience store. Id. The officer offered them a ride and, while transporting them, noticed an odor of alcohol on Flanagan. Id. Upon returning to the stranded vehicle, the officer observed empty beer cans in the car. Id. The officer asked Flanagan to perform several field sobriety tests, which Flanagan failed. Id. Two hours after the officer initially noticed the men along the side of the road, Flanagan's blood alcohol level tested in excess of the legal limit. Id. Flanagan later admitted to jail personnel that he had been driving the vehicle. Id. This court ultimately reversed Flanagan's conviction stating that the State presented no evidence as to when Flanagan became intoxicated. Id. at 1141.

In Robinson, a police officer was dispatched to the scene of a truck accident and found the truck unoccupied. Robinson v. State, 835 N.E.2d at 520. Some time later, another officer located the truck driver and his son at a store between two and four miles from the scene of the accident and noticed an odor of alcohol on Robinson, the driver. Id. Robinson admitted that he had been drinking, and a subsequent blood test revealed that his blood alcohol level was over the legal limit. Id. at 520-21. Robinson was ultimately convicted of operating a vehicle while intoxicated. Id. at 521. We reversed the conviction for a lack of evidence sufficient to prove that Robinson was intoxicated at the time he was operating his truck. Id. at 524.

Despite some similarities between the facts of this case and those in Flanagan and Robinson, we nonetheless find this case distinguishable from those. Here, as in those cases, Deputy Haley arrived on the scene an undetermined amount of time after Pace's tire blew and his car went off the road. Here, too, Deputy Haley observed that Pace was intoxicated, a fact that Pace does not dispute. However, in this case, Pace also made a very revealing statement to Deputy Haley—he told Deputy Haley he believed he would be sent to jail for drunk driving.[2] Ex. C. Unless Pace had actually been operating his vehicle while intoxicated, we can think of no reason why he would have made a statement such as this to a law enforcement officer. We conclude that this statement, coupled with Pace's admitted intoxication and the fact that he had driven the car to the

[2] It appears that several of the statements made by Pace were suppressed by the trial court because they were made in response to questions Deputy Haley asked Pace prior to Mirandizing him. The trial court did not suppress incriminating statements that Pace made voluntarily. Our review of Exhibit C, the video of Deputies Haley and Jentes's interactions with Pace, reveals that Pace voluntarily informed Deputy Haley that he believed he would be sent to jail for "DWI." Pace does not argue otherwise.

place where Deputy Haley found it along the road, were sufficient evidence from which the trial court could reasonably infer that Pace had operated his vehicle while he was intoxicated.

Conclusion

The evidence is sufficient to support Pace's conviction for operating a vehicle while intoxicated. We affirm.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.